

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF NURSING

OAL Docket No. BDS 5781-12

IN THE MATTER OF THE SUSPENSION	:	
OR REVOCATION OF THE LICENSE OF	:	
	:	Administrative Action
DEBRA WEISMAN, RN	:	
License #26NO10880100	:	ORDER
	:	
TO PRACTICE NURSING IN	:	
THE STATE OF NEW JERSEY	:	
	:	

This matter was returned to the New Jersey Board of Nursing on or about November 5, 2014, upon the issuance of an Initial Decision on Motion for Summary Decision by the Honorable Patricia M. Kerins, ALJ. In In The Matter of the Suspension or Revocation of the License of Debra Weisman, RN., A.L.J. Kerins determined that Nurse Weisman had "met her burden for summary decision in her favor," granted Nurse Weisman's motion for summary decision, and indicated that "the action of the respondent is reversed."¹

¹ The parties agree that the Order, as it reads "the action of the respondent is REVERSED" is in error and that the Order should read "the action of the" Complainant "is REVERSED." However, thus far, no "action" has been taken. Although a Provisional Order of Discipline (POD) was filed with the Board by the Attorney General, that is akin to the filing of a formal

On July 11, 2011, the Attorney General filed with the Board a Provisional Order of Discipline (POD) against Nurse Weisman. The Provisional Order, although public, does not constitute discipline - it is a formal Complaint. Following provision of due process, action is taken by the Board via a Final Order of Discipline, which is also public and does constitute discipline or "action" on the part of the Board. The POD in this case sought to suspend Nurse Weisman's license to practice until she satisfactorily demonstrated that she was fit and competent to practice nursing in New Jersey by a showing of a consensus agreement among her treating psychiatrist, her therapist, and the medical director of the Professional Assistance Program (hereinafter "PAP") attesting to her safety to practice nursing. Nurse Weisman responded to the POD by submitting two other doctor's reports and requested that the POD be modified or dismissed. After reviewing the record of the POD and Nurse Weisman's response, which now included several different reports with different diagnoses and recommendations for treatment and limitations on practice, the Board transmitted the matter to the Office of Administrative Law for a hearing and determination as

Complaint. Granting summary decision in favor of the nurse would ordinarily result in the dismissal of the Complaint - the POD in this instance.

a contested case.

At the OAL, Nurse Weisman filed a Motion for Summary Decision contending that no material question of fact existed and that the matter could be decided as a matter of law. The Attorney General filed opposition papers.

While this Administrative Law action was proceeding, Nurse Weisman also had another legal action proceeding: Nurse Weisman filed suit in the United States District Court against her former employer, Ancora Psychiatric Hospital, generally concerning the cessation of her employment at that facility. Some of Nurse Weisman's medical reports submitted in the within Administrative Action were commissioned for use in the federal case.

ALJ Kerins considered multiple physicians' reports, without regard to the purpose for which they were intended. She stated that the issue before her was whether Nurse Weisman, as a general matter, is mentally fit to practice nursing. ALJ Kerins then concluded that "on this specific issue, the mental health experts from both parties conclude that [Nurse Weisman] has complied with treatment since leaving employment at Ancora and that she is competent to practice nursing." She failed to mention or analyze the several reports recommending further

treatment or conditions to be placed on practice. Additionally, although ALJ Kerins accepted as true that Nurse Weisman had contacted Ancora staff at odd hours, made many harassing phone calls, and had an admitted history of alcohol abuse, ALJ Kerins did not find a correlation between those behaviors and Nurse Weisman's ability to discharge the functions of a nurse in a manner consistent with the public's health, safety and welfare.

The Board disagrees. There is a correlation between the behaviors described and a nurse's ability to discharge the functions of a nurse in a manner consistent with the public's health, safety and welfare. Using our collective nursing expertise we find that the behavior exhibited by the making of almost one hundred harassing phone calls to a treatment facility in the middle of the night over an extended period of time indicates such a lack of control that the safety of the public could be jeopardized. The correlation of this behavior with the ability to safely deliver health care is clear.

Additionally, the Board rejects ALJ Kerins's statement that mental health experts from both parties conclude that Nurse Weisman has complied with treatment since leaving Ancora. To the contrary, the record indicates that her most recent treating doctor, Dr. Patel who was treating her for medication management

only, recommended that she go for therapy. Thus far, the record demonstrates she did not. Additionally, the only mental health providers opining that Nurse Weisman did not need continuing evaluation, monitoring, and treatment were those two professionals that she hired as experts and whose reports indicate they were either unaware of Nurse Weisman's substance abuse history or failed to address the interplay of her dual diagnoses regarding mental health and substance abuse. Nurse Weisman's two treating physicians, Dr. Deerfield and Dr. Patel, as well as Dr. Margolis and the PAP, all recommended ongoing evaluation, monitoring, and treatment which has not occurred according to the present record.

The Board recognizes mental health and substance abuse as significant and very real issues for nurses and has a designated intervention program to address these issues. All of Nurse Weisman's health care providers agree that Nurse Weisman has mental health issues, although each has come up with a different exact diagnosis. ALJ Kerins failed to consider that from a nursing perspective, part of the problem with going for so many evaluations, as opposed to continuous treatment after evaluation with a single practitioner, is that Nurse Weisman may present differently at different times. Differing diagnoses may could

indicate emotional and mental health lability. Sometimes, differing diagnoses indicate that one's mental health is fragile and subject to decompensation. In such cases, ongoing evaluation, monitoring and treatment would be needed.

It is also equally apparent from the record and from the Board's expertise in such matters that ALJ Kerins failed to consider whether Nurse Weisman's mental health issues are exacerbated by alcohol abuse. Dr. Deerfield noted that Nurse Weisman was more psychiatrically stable when she was sober. In our expertise we are aware this is often the case with patients who have dual diagnoses. Although known to the Board, this factor was not even mentioned by the ALJ. In or around September 2009, Nurse Weisman resumed drinking after abstaining for a few months while attending 12-step and acknowledged to Dr. Deerfield that she made harassing phone calls to Ancora and/or Ancora personnel while she was under the influence of alcohol. Nurse Weisman had not worked at Ancora for almost two years (22 months) at that time. ALJ Kerins accepted as true that Nurse Weisman had a history of alcohol abuse, but failed to consider that if Nurse Weisman resumes alcohol consumption, her mental health could decompensate leading to inappropriate behavior as when she made the multitude of harassing phone calls in the

middle of the night to the psychiatric facility where she had worked as a nurse.

Additionally, Nurse Weisman has consistently demonstrated poor insight and professional judgment - critical thinking skills absolutely necessary to the practice of nursing. Nurse Weisman has never acknowledged that she made a mistake by making so many calls to Ancora in the middle of the night while she was drunk long after she worked at the facility. She continues to claim these actions were patient advocacy. These are additional factors to be considered in resolving the dispute among the experts as to whether Nurse Weisman is in need of conditions on practice, or treatment, in order to safely practice.

Nurse Weisman had, and still has an active license to practice, but a further proceeding is necessary to determine whether she is fit to practice, including whether she needs restrictions, monitoring and treatment to deal with any stressors she has and any other issues that could trigger decompensation, in order to safely practice.

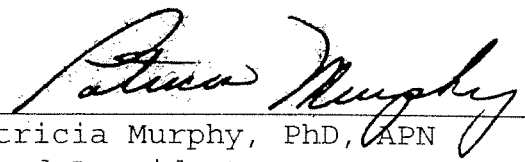
As ALJ Kerins's initial decision was on a motion for summary decision, the Board in reversing will remand the matter for further proceedings.

ACCORDINGLY, IT IS on this 29 day of January, 2015,
HEREBY ORDERED that:

1. The Initial Decision on Motion for Summary Decision of ALJ Kerins dated October 30, 2014 is hereby rejected and the matter is remanded for proceedings consistent with this decision. On remand, the Board will retain jurisdiction, and the matter will be scheduled before the Board.

NEW JERSEY STATE BOARD OF NURSING

By:


Patricia Murphy, PhD, APN
Board President